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**IN THE
COURT OF APPEALS OF INDIANA**

MARK D. BONTRAGER,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 20A05-0609-CR-529

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20D05-0309-FC-317

April 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Mark Bontrager appeals his conviction of operating a vehicle while driving privileges are forfeited for life (“driving with lifetime suspension”) as a Class C felony.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

In 1996, Bontrager pled guilty to being an habitual traffic offender as a Class D felony under Ind. Code § 9-30-10-16. As part of his sentence, his driving privileges were suspended for life. He sought post-conviction relief in August 2003.

On September 6, 2003, police stopped Bontrager while he was driving. The lifetime suspension was still in effect as of that date. Bontrager was arrested and charged with driving with lifetime suspension.

In October 2003, the post-conviction court set aside his 1996 conviction and the lifetime suspension of his driving privileges. On March 24, 2006, Bontrager was convicted of driving with lifetime suspension, based on his arrest in September 2003.

DISCUSSION AND DECISION

In reviewing sufficiency of the evidence, we will affirm a conviction if, considering only the probative evidence and reasonable inferences supporting the verdicts and without weighing evidence or assessing witness credibility, a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Hawkins v. State*, 794 N.E.2d 1158, 1164 (Ind. Ct. App. 2003).

¹ Ind. Code § 9-30-10-17.

“A person who operates a motor vehicle after the person’s driving privileges are forfeited for life under [Ind. Code § 9-30-10-16] . . . commits a Class C felony.” Ind. Code § 9-30-10-17.

Bontrager stipulated his driving privileges had been suspended for life after he pled guilty in 1996 to being an habitual traffic offender as a Class D felony, and the suspension was still in effect on September 6, 2003, when he “operat[ed] a motor vehicle on a public highway.” (App. at 49.) The judgment of conviction in Bontrager’s 1996 case indicates he was found “guilty of HTO a cl. D felony (under I.C. 9-30-10-16).” (State’s Ex. 2.) The evidence was sufficient to convict Bontrager under Ind. Code § 9-30-10-17.

Nonetheless, Bontrager argues the conviction cannot stand because his prior conviction and lifetime suspension under Ind. Code § 9-30-10-16 were set aside after he was arrested but before he was tried. We disagree.

Our Indiana Supreme Court held in *State v. Hammond*, 761 N.E.2d 812, 815 (Ind. 2002), *reh’g denied*: “For purposes of a driving while suspended charge, we . . . look to the appellant’s status *as of the date of that charge*, not any later date on which the underlying suspension may be challenged or set aside.” (Emphasis added.) The *Hammond* court addressed a conviction of operating a motor vehicle while privileges are suspended under Ind. Code § 9-30-10-16. Nevertheless, we conclude its holding is equally applicable to a conviction under Ind. Code § 9-30-10-17. Under both sections, the essence of the offense is the act of driving after one’s driving privileges have been suspended. “If the person is driving despite notification that he may not do so . . . he is

flaunting the law even if one or more of the underlying convictions is voidable.” *Hoaks v. State*, 832 N.E.2d 1061, 1064 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied* 841 N.E.2d 188 (Ind. 2005). Accordingly, we affirm.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.